

**CITY OF MILPITAS  
Summary of Contents  
Milpitas City Council Meeting  
January 18, 2005  
6:00 p.m. Closed Session  
7:00 p.m. Public Business  
455 E. Calaveras Boulevard**

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**I. ROLL CALL (6:00 p.m.)**

**II. ADJOURN TO CLOSED SESSION**

- 1. Conference with Legal Counsel: Existing Litigation**  
(Pursuant to Government Code Section 54956.9(a))  
Milpitas v. Turner Construction et al., Santa Clara County Superior

**III. CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote on abstention of each member present**

**IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)**

**V. APPROVAL OF MINUTES:** December 21, 2004, and January 4, 2005

**VI. SCHEDULE OF MEETINGS**

**VII. PRESENTATIONS (NONE)**

**VIII. CITIZENS FORUM**

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Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to under two minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

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**IX. ANNOUNCEMENTS**

**X. ANNOUNCEMENT OF CONFLICT OF INTEREST**

**XI. MOMENTS OF REFLECTION**

**XII. APPROVAL OF AGENDA**

**XIII. CONSENT CALENDAR (Items with Asterisks)**

**XIV. PUBLIC HEARINGS**

- 1. Consider Request for Flag Ceremony at Higuera Adobe: Boy Scouts Of America Troop 101 Requests Permission to Raise the American and Vietnamese Flags at the Higuera Adobe on January 9, 2005, 9:30 A.M. to 12:00 P.M. (Staff Contact: Charles R. Lawson, City Manager, 586-3050)**
- 2. Approve 2005 Citizen Options for Public Safety Grant (COPS) (Staff Contact: Dennis Graham, 586-2502)**

**XV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING**

**RA1. Call to Order by the Mayor**

**RA2. Roll Call**

**RA3. Approval of Minutes:** December 21, 2004, and January 4, 2005

**RA4. Approval of Agenda and Consent Calendar**

**RA5. Public Hearing: Approve the Elmwood Residential Development Project and authorize the Redevelopment Agency Executive Director to enter into a Disposition and Development Agreement with KB Home South Bay Inc. for the purpose of Sale and Development of the Elmwood Surplus Properties (Staff Contacts: James Lindsay, 586-3274 and Troy Fujimoto, 586-3287)**

**\*RA6. Appropriate Monies Received into the Library Utility Improvement Project (Project No. 8153) (Staff Contact: Steve Erickson, 586-3414)**

**\*RA7. Award Contract: Ranis Construction & Electric Inc.; Acoustical Ceiling and Frame Replacement; Senior Center Renovation (Project No. 8134) (Staff Contact: Mark Rogge, 586-3403)**

**RA8. Agency Adjournment**

**XVI. REPORTS OF OFFICERS AND BOARDS**

**City Council**

- 3. Consideration of Support for Measure A (Milpitas Unified School District Parcel Tax Measure on the March 2, 2005, Ballot): Mayor Esteves**
- 4. Information on Current City Commission Vacancies and Encouragement to Residents to Apply: Mayor Esteves**
- 5. Consideration of Appropriate Memorial for Neil Mackenzie: Mayor Esteves**
- 6. Discussion and Action Related to the Creation of a City Council Finance Subcommittee: Vice Mayor Gomez (Contact: Vice Mayor Gomez, 942-1110)**
- 7. Consideration of Appropriate Memorial for Former Councilmember Barbara Lee: Councilmember Giordano**

**XVII. UNFINISHED BUSINESS**

- 8. Consideration of Amendment to City Council Handbook Sections Related to Appointment Procedures for Boards and Commissions, City Council Committees and Outside Agency City Council Positions (Staff Contact: Steve Mattas, 586-3040)**
- 9. Approve Final Ethics Awareness Survey Draft and Date for Final Council Ethics Training and Decide Whether to Conduct a Second Make-Up Session for Commissioners (Staff Contact: Tambri Heyden, 586-3280)**
- 10. Sign Code Task Force Status Report on Sign, Zoning and Neighborhood Beautification Ordinance Amendments to Enhance the Code Enforcement Program (Staff Contact: Tambri Heyden, 586-3280)**

- \* 11. **Direct Staff to Respond to Proposed Urban Runoff Permit Amendment (Staff Contact D. Wong, 586-3345)**

**XVIII. NEW BUSINESS**

- \* 12. **Designate the Site of the O'Toole Elms as a City Cultural Resource (Staff Contact: Kim Duncan, 586-3283)**

**XIX. ORDINANCES**

- 13. **Introduce Ordinance No. 267 Repealing Section 1-310-9.10 of Title 1 of the Milpitas Municipal Code and Adding a New Chapter 330 to Title 1 Establishing a Lobbying Ordinance (Staff Contacts: Tambri Heyden, 586-3280 and John Bakker, 586-3040)**

**XX. RESOLUTIONS**

- \* 14. **Adopt a Resolution Amending the Classification Plan to Establish a Revised Classification and Abolish Two Job Classifications: Executive Secretary to the City Manager and Executive Secretary to the Assistant City Manager (Staff Contact: Cherie Rosenquist, 586-3090)**
- \* 15. **Adopt Resolution to Amend the Memorandum of Understanding with Milpitas Employees Association (Staff Contact: Cherie Rosenquist, 586-3082)**

**XXI. BIDS AND CONTRACTS**

- \* 16. **Review and Approve Amendment No. 3 to Consulting Services Agreement Between City of Milpitas and Dr. Thomas Shanks Consulting to Extend the Contract Expiration Date and Postpone the Due Date of the Final Report (Staff Contact: Tambri Heyden, 586-3280)**
- \* 17. **Authorize the Purchase of Mobile Computer Upgrades (Staff Contact: Bill Marion, 586-2701)**
- \* 18. **Authorize City Manager to Execute Agreement Amendment: Damon S. Williams Associates (Project No. 7100) (Staff Contact: Doug De Vries, 586-3313)**
- \* 19. **Approve Contract Extension for Asphalt Pavement Patching and Repair: Wattis Construction Co., Inc. (Project No. 4182) (Staff Contact: Chris Schroeder, 586-3161)**

**XXII. CLAIMS AND DEMANDS (None)**

**XXIII. ADJOURNMENT**

**NEXT REGULARLY SCHEDULED COUNCIL MEETING  
TUESDAY, FEBRUARY 1, 2005, AT 7:00 P.M.**

**CITY OF MILPITAS  
Agenda Reports  
Milpitas City Council Meeting  
January 18, 2005  
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**XIV. PUBLIC HEARINGS**

- 1. Consider Request for Flag Ceremony at Higuera Adobe: Boy Scouts Of America Troop 101 Requests Permission to Raise the American and Vietnamese Flags at the Higuera Adobe on January 9, 2005, 9:30 A.M. to 12:00 P.M. (Staff Contact: Charles R. Lawson, City Manager, 586-3050)**

**Background:** February 9, 2005, marks the Vietnamese New Year. Boy Scout Troop 101 requests permission to acknowledge the New Year with a Flag Raising Ceremony at the Higuera Adobe. This includes raising both the American and Vietnamese flags on January 30, 2005, from 8:30 a.m. to 12:00 p.m.

**Recommendation:**

1. Close the public hearing.
2. Consider request.

- 2. Approve 2005 Citizen Options for Public Safety Grant (COPS) (Staff Contact: Dennis Graham, 586-2502)**

**Background:** The California State Legislature awarded \$100,000 to the City of Milpitas through the Citizen Options for Public Safety Grant (COPS). No city matching funds are required.

Government Code sections 30061-30065 specify that these funds must be used for front line law enforcement services and must supplement and not supplant existing funding for front line law enforcement services. These funds shall be appropriated pursuant to a written request from the Chief of Police of the law enforcement agency that provides police services for that city. The request shall indicate the front line law enforcement needs of the requesting entity including the personnel and equipment that are necessary to meet those needs.

The police staff is requesting that the designated funds be used to purchase: TouchPrint Livescan system for fingerprinting volunteers and license applicants; two portable NEC Child ID kits to fingerprint children; IVIS 2000 Badging station to create durable, secure identification cards for Police and Fire Department personnel; three Talon II moving/stationary radars; chemical agents for critical incidents; lights for AR-15 rifles; two Toughbook laptop computers; and tactical vests.

**Recommendation:**

1. Close the public hearing.
2. Approve appropriation in the amount of \$100,000 into the Police operating budget.

**XV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING**

**RA1. Call to Order by the Mayor**

**RA2. Roll Call**

**RA3. Approval of Minutes: December 21, 2004, and January 4, 2005**

**RA4. Approval of Agenda and Consent Calendar**

**RA5. Public Hearing: Approve the Elmwood Residential Development Project and authorize the Redevelopment Agency Executive Director to enter into a Disposition and Development Agreement with KB Home South Bay Inc. for the purpose of Sale and Development of the Elmwood Surplus Properties (Staff Contacts: James Lindsay, 586-3274 and Troy Fujimoto, 586-3287)**

**Background:** On December 14, 2004, the City Council continued consideration of the Elmwood project approval except for the Environmental Impact Report which was certified at that meeting. In June of 2003, within the context of the Eighth Amendment to the Redevelopment Plan for Redevelopment Project Area No. 1, the Redevelopment Agency and City Council entered into a series of agreements with the County of Santa Clara for the purchase and development of surplus County property at Elmwood. The Redevelopment Agency and the County of Santa Clara agreed to the purchase and sale of 35 acres of County property by the Redevelopment Agency. The Agency agreed to the assignment from the County of an Exclusive Negotiating Rights Agreement and Purchase and Sale Agreement with KB Home South Bay, Inc. to develop 34 acres according to the terms and conditions negotiated between KB Homes and the County. Subsequent to the June agreements, the County, KB Home, the Redevelopment Agency, and the City agreed on the means and methods to provide for affordable housing on and off-site related to the KB development. A copy of the final version of the Disposition and Development Agreement is included as an attachment to this staff report. Staff recommends that the Council/Agency utilize the attached version rather the previously distributed version.

As a companion to the development by KB Homes, the County had envisioned, and has begun, the development of 23.5 acres fronting Interstate 880 for three to four auto dealerships.

In brief, the Elmwood agreements provided for the following key elements:

- The purchase of 35 acres of Elmwood property for \$135 million paid out over 20 years, plus the payment of the developer-negotiated value of \$57,750,000, and additional future payments based upon valuation and sales activity. (Parcels C & D) This amount includes a \$20,000,000 subsidy by the Redevelopment Agency for infrastructure development and mitigation related to the residential development.
- The permanent elimination of the expansion of the Elmwood Correctional Facility.
- The acquisition of the 1.06-acre Cracolice Site. (Parcel E)
- The development of approximately 700 housing units. Currently, the developer proposes to construct 683 residential units: 315 condominiums, 203 flats, and 165 single-family homes. This does not include the 104 affordable senior housing units, off-site.)
- Development of 6.5 acres of public parks of which 3.1 acres could be developed utilizing the San Francisco Public Utility Commission right-of-way. (Currently, the developer proposes to develop 7 acres of public park and 10 acres of private recreational space.)
- Development of 110 deed-restricted moderate income affordable units on site and a contribution of \$5,000,000 by KB Home for the development of at least 98 deed-restricted very low and low income affordable senior units off-site. (Currently, 104 senior affordable units for extremely low and very low-income seniors are planned to be developed.)
- The development by the County of Santa Clara of 23.5 acres fronting Interstate 880 for auto dealerships. (Parcel B)

Subsequent to the adoption of the above agreements, the developer, the County and city staff have worked diligently and earnestly to implement the provisions of the previously adopted agreements. As a whole, the business transaction agreed to in June 2003 has remained unchanged, however, some of the implementation terms have been adjusted. For example, the number of affordable housing units remains in proportion to the number of market rate units originally envisioned, although the exact number has changed. If approved, the following applications will act as the consummation of the terms and conditions of the previous agreements.

**GENERAL AND SPECIFIC PLAN AMENDMENT (GP2003-1):** Amendment to the General Plan and Midtown Specific Plan land use designations of Parcel E and portions of Parcels C & D.

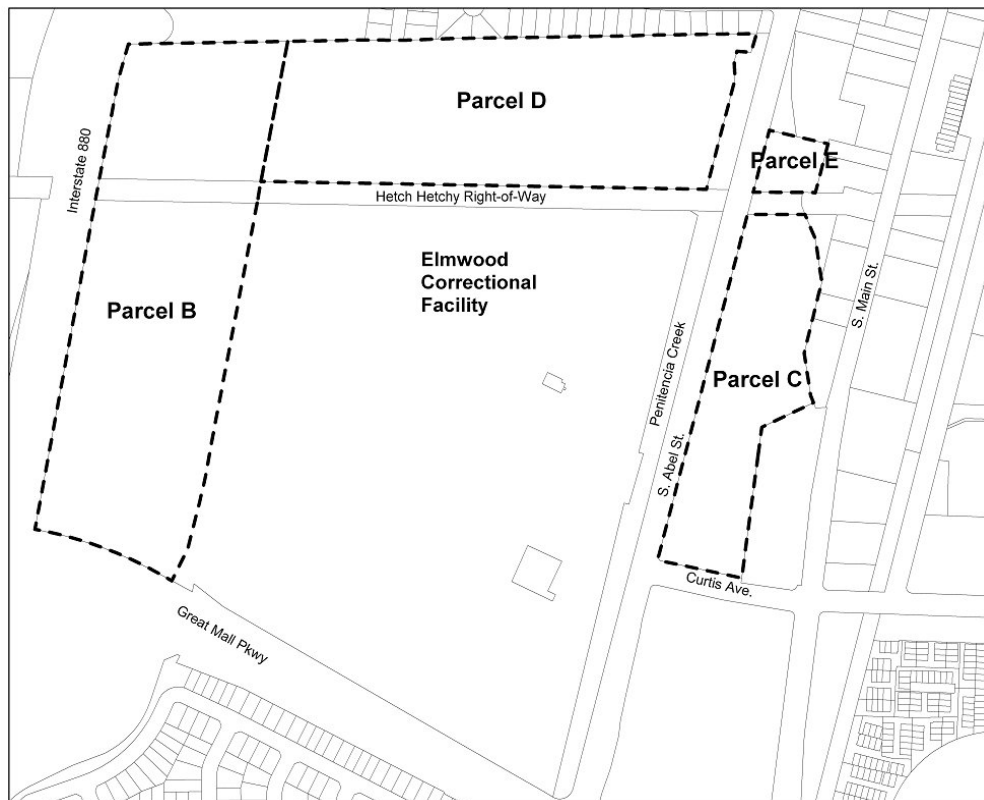
**ZONING MAP AMENDMENT (ZC2003-2):** Rezone Parcel E and portions of Parcels C & D.  
**MAJOR VESTING TENTATIVE MAP NO. MA2003-4:** Subdivision of land for residential, parks, and commercial purposes.

**PLANNED UNIT DEVELOPMENT NO. PD2003-1:** Development of 165 small lot single-family and 203 townhome units on Parcel D.

**SITE AND ARCHITECTURE REVIEW (SZ2003-6):** Development of 315 condominium units on Parcel C.

**USE PERMIT NO. UP2003-26:** Deviation of development standards including usable open space per unit, number of floors, and setbacks for the condominium units on Parcel C.

*Parcel Labels*



Pursuant to California Community Redevelopment law, a redevelopment agency may sell property without public bidding after a public hearing, notice of which is published for not less than once per week for two weeks. This noticing has been accomplished. Additionally, the Redevelopment Agency must hold a hearing on the "Fair Reuse Report" prior to considering the property's disposition. The Fair Reuse Report must include the cost of the agreement to the Agency, including the Agency's acquisition costs, costs of improvements to be provided by the Agency, and expected interest to be paid on loans or bonds, the value of the interest to be conveyed, the sales price to be paid, an explanation of any difference between the sale price and fair market highest and best use value, and an explanation of how the sale will assist the elimination of blight. In order to prepare the Fair Reuse Report the Agency retained the services of the expert firm of Keyser Marston who will be present at the hearing. A copy of the Fair Reuse Report is attached.

The instrument to effectuate the sale and development of the property, the Disposition and Development Agreement (DDA), to KB is attached. It contains the business agreements arrived at between the County and KB as well as reinforcing various conditions of approval. According to the terms of the Agreement, the Parcel D property (the area west of Abel) is expected to close escrow on February 19, 2005 or the first business day thereafter. The close of escrow for Parcel C property (on the east side of Abel) is anticipated to occur not later than 180 days after February

19, 2005. The agreement envisions that construction will commence early spring 2005 and requires that two of the access roads, the road from Great Mall Parkway north and the entry road parallel to the Hetch-Hetchy right-of-way, be substantially completed by November 20, 2005.

The amount of off-site improvements envisioned to make this project an outstanding addition to the community are more numerous than anticipated and the cost more than originally planned. More improvements have been added, for example the Abbott Street connection, and costs have increased since the agreement was first negotiated in late 2002 and early 2003. In order to maintain the economics for the project for both the County and the developer, it is proposed that an additional \$6 million be provided for off-site infrastructure and mitigation costs. This amount of money is available in reserved undesignated redevelopment funds.

The Planning Commission reviewed the project at its November 17<sup>th</sup> meeting and recommended the Council approve all the components of the Elmwood Residential Project with modifications. The Commission recommended that the public park proposed along the west side of Abel Street on Parcel D be centrally located on the parcel and doubled in size and supported the Parks, Recreation, and Cultural Resources Commission's (PRCRC) recommendation that the new Elms Parks and the adjacent condominium building on Parcel C be re-designed around seven of the O'Toole elm trees.

The PRCRC reviewed the amenities for the public park areas at their October and November, 2004, meetings and recommended a public restroom be constructed in the public park proposed along the west side of Abel Street on Parcel D, that more shade structures be provided at the picnic areas, and that seven of the O'Toole elm trees be preserved. In addition, the PRCRC recommended that seeds from the elms be propagated to replace the trees that are removed and that the wood from the removed trees be used to make commemorative plaques. Since the November 17, 2004, Planning Commission meeting at which the Commission recommended approval of the project, staff is recommending additional conditions of approval be included as part of the project proposal. One of the changes is that land east of the proposed north-south public road, up to the existing Elmwood Correctional Facility fence line, shall be dedicated and maintained by the City. This will allow the City to install and maintain landscaping appropriate to the quality of other landscaping throughout the project area.

In addition, staff had originally recommended that no sidewalk be constructed along the east-west road. However, after further discussions with the County, it was determined that a sidewalk would be needed on the northern side of this road. Reasons for the sidewalk include the need for public pedestrian access to the Elmwood facility since many visitors who use the bus currently already use this accessway from Abel Street. Due to security concerns, the County does not want the sidewalk on the south side of the road, closest to the existing security fence.

**Recommendation:**

1. Close the joint public hearing.
2. Adopt the Resolution approving the General Plan and Midtown Specific Plan Amendments.
3. Introduce Ordinance 38.765 (ZC2003-2), relating to the Zoning Ordinance Map changes, waiving reading beyond the title.
4. Approve the Elmwood Vesting Major Tentative Map (MA2003-4), Planned Unit Development No. PD2003-1, S-Zone (SZ2003-6) and Use Permit No. UP2003-26, based on the findings and special conditions contained in the Council's agenda packet, dated December 8, 2004.
5. Adopt the Resolution of the City Council of the City of Milpitas approving the Disposition and Development Agreement between the Milpitas Redevelopment Agency and KB Homes Southbay Inc. and approving the Reuse Report required by Health and Safety Code Section 33433, and adopting findings in connection with such sale.

**\*RA6. Appropriate Monies Received into the Library Utility Improvement Project (Project No. 8153) (Staff Contact: Steve Erickson, 586-3414)**

**Background:** Apton Properties, LLC has obtained Council approval to develop the existing parcels on northeast corner of North Main Street and Weller Lane across the street from the new library project. As part of this development, Apton entered into agreements with the City for a land swap, to pay for related soil clean up, for utility construction coordination and cost sharing and compensation for City property. Apton has submitted payment totaling \$180,335.15 for all of these items. It is recommended that \$169,910.00 of these monies be appropriated into Project No. 8153 for the cost of the utility improvement work in Weller Lane. The compensation for City Property of \$12,359 is to be appropriated into the General Fund.

**Recommendation:** Appropriate the monies received from the Apton Properties, LLC totaling \$169,910.00 into Project No. 8153, and \$12,359 into the General Fund.

- \*RA7. Award Contract: Ranis Construction & Electric Inc.; Acoustical Ceiling and Frame Replacement; Senior Center Renovation (Project No. 8134) (Staff Contact: Mark Rogge, 586-3403)**

**Background:** With the completion of the Interim Senior Center Kitchen and Internal Improvements in February 2005, The Interim Senior Center Building generally has a fresh and clean look. Staff recommends the replacement of the existing acoustical ceiling, and supporting frame system in the areas not replaced by the Kitchen Improvement Project. The remaining portion of the ceiling that was not replaced for the kitchen work lacks compression struts that are recommended for stability during an earthquake. The work will also eliminate the sags and discoloration of the existing ceiling, providing brighter light reflection. Staff has solicited bids and received two bids for the acoustical ceiling and supporting frame system replacement. The lowest bid is in the amount of \$19,389.41 from Ranis Construction & Electric, Inc, which is considered reasonable for the amount of work. There are sufficient funds in the project budget to cover this expense.

**Recommendation:** Award the Acoustical Ceiling and supporting frame system replacement contract to Ranis Construction & Electric Inc. in an amount not to exceed \$19,389.41.

**RA8. Agency Adjournment**

**XVI. REPORTS OF OFFICERS AND BOARDS**

**City Council**

- 3. Consideration of Support for Measure A (Milpitas Unified School District Parcel Tax Measure on the March 2, 2005, Ballot): Mayor Esteves**

**Background:** Mayor Esteves placed this item on the agenda and is asking the Council to consider support for Measure A, a parcel tax measure placed on the March 2, 2005, Special Election ballot by the Milpitas Unified School District Board of Trustees. Measure A, if passed, would levy an annual tax of \$140 per parcel for five years with the proceeds used to support educational programs and projects. The measure would require a two-thirds vote to pass and includes an exemption for senior citizens 65 years or older. A copy of the full ballot text and the Ballot Argument in favor of Measure A are included in the Council's agenda packets.

If the Council desires to support Measure A, staff should be directed to place a resolution of support on the next Council agenda for formal approval.

**Recommendation:** Consider support of Measure A and direct staff accordingly.

- 4. Information on Current City Commission Vacancies and Encouragement to Residents to Apply: Mayor Esteves**



**Background:** Mayor Esteves has placed this item on the agenda to advise the Council and the public of current vacancies for all City Commissions and to encourage residents to apply. The vacancies are:

Bicycle Transportation Advisory Commission (1 Vacancy)  
Citizens Emergency Preparedness Advisory Commission (Industry Representative Vacancy)  
Community Advisory Commission (2 Vacancies)  
Economic Development Commission (1 Vacancy)  
Mobile Home Rental Review Board (1 Vacancy)  
Parks, Recreation, & Cultural Resources Commission (2 Vacancies)  
Recycling & Source Reduction Advisory Commission (1 Business, 1 Resident Vacancy)  
Telecommunications Commission (1 Vacancy – Alternate #1 effective 1/31/05)  
Youth Commission (3 Alternates)

Mayor Esteves will be making recommendations for appointments at the February 15, 2005, City Council meeting and will consider all Community Service Applications filed by February 8. Community Service Applications are available at all City public counters (City Hall, Community Center, Sports Center, Senior Center) and on the City's web site ([www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov)). To receive an application by mail, call the City Clerk's Office at 586-3001.

**Recommendation:** Encourage completion of Community Service Applications.

**5. Consideration of Appropriate Memorial for Neil Mackenzie: Mayor Esteves**

**Background:** At the January 4, 2005, City Council meeting, Mayor Esteves requested an item on a future agenda for the Council to consider an appropriate memorial for former community activist and Sunnyhills resident Neil MacKenzie. The Council has a Facilities Naming Subcommittee comprised of Vice Mayor Gomez and Councilmember Livengood, and the request could be referred to that Subcommittee.

**Recommendation:** Refer the request for an appropriate memorial for Neil MacKenzie to the Council's Facilities Naming Subcommittee.

**6. Discussion and Action Related to the Creation of a City Council Finance Subcommittee: Vice Mayor Gomez (Contact: Vice Mayor Gomez, 942-1110)**

**Background:** Vice Mayor Gomez placed this item on the agenda and is requesting the Council discuss and take appropriate action regarding the creation of a Council Subcommittee on Finance.

**Recommendation:** Discuss and take action regarding the creation of a City Council Subcommittee on Finance.

**7. Consideration of Appropriate Memorial for Former Councilmember Barbara Lee: Councilmember Giordano**

**Background:** At the January 4, 2005, City Council meeting, Councilmember Giordano requested an item on a future agenda for the Council to consider designating some public entity in memory of former Councilmember Barbara Lee. The Council has a Facilities Naming Subcommittee comprised of Vice Mayor Gomez and Councilmember Livengood, and the request could be referred to that Subcommittee.

**Recommendation:** Refer the request for an appropriate memorial for former Councilmember Barbara Lee to the Council's Facilities Naming Subcommittee.

**XVII. UNFINISHED BUSINESS**

**8. Consideration of Amendment to City Council Handbook Sections Related to Appointment Procedures for Boards and Commissions, City Council Committees and Outside Agency City Council Positions (Staff Contact: Steve Mattas, 586-3040)**

**Background:** At the City Council meeting of December 7, 2004, the City Council created an Appointments Subcommittee to make recommendations to the Mayor and City Council regarding the appointment of Councilmembers to City Council Committees, City Council Liaison positions, to outside agencies and regarding appointments to City Commissions. The City Council also appointed Councilmember Livengood and Vice Mayor Gomez to the newly-formed subcommittee. At the City Council meeting of January 4, 2005, the City Council provided the City Attorney with direction to amend the City Council Handbook section related to Council Committees, liaison, and outside agency appointments and board and commission appointments to reflect the advisory role of the newly-created subcommittee in the appointment process.

The attached amendment to the City Council Handbook would add language to the sections related to boards, regional boards, ad hoc and standing subcommittees and commissions to explain the advisory role of the Council Subcommittee in the appointment process. Under the proposed amendment, the Subcommittee would make appointment recommendations to the Mayor, to be presented to the Mayor and City Council at a City Council meeting, at which time, with the Mayor's concurrence, the recommendations would be presented to the City Council by the Mayor for consideration and action.

**Recommendation:** Consider the proposed amendment and provide direction.

**9. Approve Final Ethics Awareness Survey Draft and Date for Final Council Ethics Training and Decide Whether to Conduct a Second Make-Up Session for Commissioners (Staff Contact: Tambri Heyden, 586-3280)**

**Background:** At the December 21, 2004, Council meeting, the Council postponed consideration of this agenda item until January 18, 2005. This item is one of the remaining deliverables under the ethics project contract with Dr. Shanks - preparation and distribution of a final ethics program awareness survey. The results of the survey will be included in Dr. Shanks' final report which under his current contract is due to the City on January 31, 2005 (a separate agenda item on the January 18, 2005, agenda proposes to extend this date 60 days given the postponement in the release of the survey).

Unlike the distribution of the initial survey in March that was on-line for completion by a random sample of Milpitas households, the final survey is proposed to be published in the *Milpitas Post* for readers to tear out and mail to the City by February 17, 2005, in addition to being available on-line. While the format of the final survey is patterned after the initial survey, newspaper distribution of the final survey is proposed to obtain a greater number of respondents. Respondents can be individuals who live or work in Milpitas who are over the age of 18.

The final ethics survey draft is included in the Council's agenda materials. The intent of the survey is to determine the effectiveness of the ethics program in building public trust and to gauge how well Milpitas public officials are doing practicing the City's Ethics Code core values of honesty, respect, fairness, stewardship, teamwork, and accountability. Thus, survey questions seek to find out how familiar respondents are with the ethics program; how they heard about the program; whether they voted in the local election; how useful the forums, Ethics First! educational pieces, newspapers articles and endorsements and materials published by candidates and their supporters were in making voting decisions; how effective various ethics implementation methods would be on the next three elections; and the degree of fairness of several examples of campaign candidate behavior.

Other components of the ethics program are also winding down. All candidate, senior staff, Commissioner, staff liaison and ethics evaluator training sessions have been completed. The Council set its final training session for November 17, 2004. However, as noted in the City

Manager's weekly Council report, this session was postponed given a new Councilmember was elected. It is recommended that the final training be rescheduled to early February before the end of Dr. Shanks' proposed contract extension. Tuesday, February 8, 2005 at 6:00 p.m. is suggested.

Regarding Commissioner training, 74 out of the City's 125 Commissioners received training at one of the two sessions that were offered in October. Given that training is mandatory, the Ethics Steering Committee recommends that a second make-up session be offered to ensure all Commissioners participate in the program. There will be no additional cost to the City for this session given the structure of Dr. Shanks' contract.

**Recommendation:** The Ethics Steering Committee recommends that the City Council:

1. Approve the final ethics awareness survey draft for distribution in February;
2. Set the date of February 8, 2005, at 6:00 p.m. in the Council Chambers for a special Council meeting for the final ethics training session; and
3. Direct that a date be set for a second ethics training make-up session for Commissioners.

**10. Sign Code Task Force Status Report on Sign, Zoning and Neighborhood Beautification Ordinance Amendments to Enhance the Code Enforcement Program (Staff Contact: Tambri Heyden, 586-3280)**

**Background:** On December 21, 2004, the Council considered first reading of amendments to the City's Sign, Zoning, and Neighborhood Beautification Ordinances to enhance the City's code enforcement program. At that meeting, the Council directed staff to return to the Council in 90 days after achieving greater support of the amendments from the Sign Code Task Force. The Council also directed that upon return of the amendments, the proposal to transition to proactive code enforcement not be included and be delayed to some future date.

The Sign Code Task Force met on January 7, 2005. Although not all individuals who have attended one or more meetings of the task force were present, those individuals who spoke against the amendments at the December 21, 2004 Council meeting were present. Attendees unanimously concluded that:

- 1) The proposed ordinance amending the Sign Ordinance, Zoning Ordinance and Neighborhood Beautification Ordinance is acceptable, as it stands, if:
  - a) the definition of "Individual Violation" is revised in all three ordinances to reflect examples of individual violations specific to those ordinances, thus creating three different definitions for the term "Individual Violation";
  - b) a minimum of one written violation notice be provided to a violator before a fine can be levied for recurring types of individual violations; and
  - c) a 6-month effective date, from time of ordinance adoption, for Sign Code administrative citation authority be added to the ordinance.
- 2) Within the 6-month period between ordinance adoption and implementation of Sign Code enforcement, the following shall occur:
  - a) courtesy notices of Sign Code violations shall be issued by staff in response to all Sign Code customer service requests. Courtesy notices shall state whether the violation results from the new Sign Code amendments and clearly explain the new amendment and how to comply, as well as to inform of the 6-month grace period during which fines cannot be levied for non-compliance;
  - b) an educational outreach program shall be conducted to all businesses explaining the new amendments to the Sign Code, the enforcement procedure and the consequences of a violation of the ordinance. This would include information and outreach via the City's website, utility bill inserts, the city newsletter, direct mailings by the City, e-mails sent by the Chamber of Commerce and the Santa Clara County Association of Realtors to their members, guest presentations by staff to the real estate industry and the various Chambers of Commerce, and distribution of flyers attached to business license applications for new businesses; and

- c) continuation of quarterly task force meetings for one year after ordinance adoption to monitor compliance by violators and implementation of the ordinance to assess whether any fine tuning is needed to the ordinance in the future and to determine when it may be appropriate to resurrect the proactive enforcement proposal.

**Recommendation:**

1. Receive the Sign Code Task Force's status report; and
2. Support the Sign Code Task Force's recommendation to agendize the 12/21/04 proposed amendments to the Sign, Zoning and Neighborhood Beautification Ordinances with the above minor revisions for first reading at the Council's February 1, 2005 meeting.

**\* 11. Direct Staff to Respond to Proposed Urban Runoff Permit Amendment (Staff Contact D. Wong, 586-3345)**

**Background:** The existing Santa Clara Valley Urban Runoff permit, issued to 15 agencies, including Milpitas, contains requirements directed at preventing stormwater discharge pollution. The permit was amended in October 2001 to incorporate several additional requirements, known as C3, for new developments. Milpitas has implemented the new requirements through a revised Urban Runoff ordinance, a Stormwater C3 Guidebook for developers, and staff training sessions, among others.

**Discussion:** Regional Water Quality Control Board (RWQCB) staff believes some of the Co-Permittees, including Milpitas, are not fully implementing the new requirements. City staff responded at a RWQCB November hearing by providing information on Milpitas' compliance efforts. As a result, the RWQCB directed their staff to work cooperatively with the Co-Permittees to address concerns and validate compliance efforts. One meeting was conducted in December with Board staff. City staff anticipated that more meetings would be necessary to complete the effort. However, on December 23, RWQCB staff circulated a proposed Permit Amendment with a tentative hearing to adopt amendments on February 14, 2005.

Key changes currently proposed by Board staff include requiring board approval prior to implementing any local waiver program, and limiting exceptions to the C.3 requirements only after demonstration of undue burden to the project. The potential impact would be greatest on Milpitas redevelopment projects, which are less able, given the very limited land area, to meet the stringent treatment requirements. A memorandum providing permit background and proposed changes is included in the Council packet.

**Recommendation:** Direct staff to continue working with Regional Water Quality Control Board staff to cooperatively achieve compliance in lieu of additional permit revisions, and to oppose any permit revision not in the interest of Milpitas (particularly in the redevelopment area) at the anticipated board amendment hearing.

## **XVIII. NEW BUSINESS**

**\* 12. Designate the Site of the O'Toole Elms as a City Cultural Resource (Staff Contact: Kim Duncan, 586-3283)**

**Background:** On October 8, 2003, the Parks, Recreation and Cultural Resources Commission (PRCRC) recommended the City Council designate the O'Toole Elms site as a Cultural Resource. The Cultural Resources Preservation Ordinance requires the Planning Commission make a general plan conformance finding before the City Council considers a designation. The Planning Commission held a public hearing at their January 14, 2004 meeting and directed staff to re-notice the hearing to coincide with the review of the Elmwood Residential project. The Planning Commission reviewed the conformance of the designation at their December 8<sup>th</sup> meeting and found it in conformance with the City of Milpitas General Plan. The proposed designation meets two Cultural Preservation Program criteria in that:

- the elms reflect elements of the City's social, political and aesthetic history because they are representative of the rich farming history of Rancho Milpitas in the 1860's; and
- the elms are representative and a valuable example of a distinct period in the history of the country because such groves were typical in colonial days and functioned as wind breaks and farmhouse entryways.

**Recommendation:** Designate the site of the O'Toole Elms as a City Cultural Resource.

## **XIX. ORDINANCES**

### **13. Introduce Ordinance No. 267 Repealing Section 1-310-9.10 of Title 1 of the Milpitas Municipal Code and Adding a New Chapter 330 to Title 1 Establishing a Lobbying Ordinance (Staff Contacts: Tambri Heyden, 586-3280 and John Bakker, 586-3040)**

**Background:** At the December 21, 2004, Council meeting, the Council postponed this proposed lobbyist registry ordinance to the January 18, 2004, meeting. This ordinance has been prepared pursuant to the Council's approval of the ethics project implementation plan and amended contract with Dr. Shanks. It was reviewed by the Ethics Steering Committee in December and by the Community Advisory Commission at their January 5, 2005 meeting. Minor word changes for format consistency purposes have been made in response to comments from the CAC and are incorporated in the version of the ordinance included in the Council's packet.

This proposed ordinance goes beyond the interim lobbyist regulations that are part of the existing Open Government Ordinance. Thus, the new ordinance would repeal the existing regulations. The purpose of the proposed lobbying ordinance is to maintain citizens' right to petition government; to guarantee that the public's interest is being served; to provide an environment that requires decision-makers' independent judgment; to disclose prior relationships and current contacts between city officials, lobbyists, political consultants, fundraisers and lobbyists' clients; and to set standards to hold city officials accountable to the City's Ethics Code. To achieve these goals, the lobbying ordinance:

1. defines and distinguishes between lobbyists and political consultants;
2. requires that lobbyists register with the City Clerk and re-register and keep their registry information up-to-date;
3. provides a procedure for barring a person who does not register;
4. requires quarterly disclosure of all lobbying activities;
5. establishes penalties for violating the ordinance; and
6. provides for the ability to assess registration fees.

**Recommendation:** The Ethics Steering Committee recommends the Council:

1. Waive reading beyond the title; and
2. Introduce Ordinance No. 267.

## **XX. RESOLUTIONS**

### **\* 14. Adopt a Resolution Amending the Classification Plan to Establish a Revised Classification and Abolish Two Job Classifications: Executive Secretary to the City Manager and Executive Secretary to the Assistant City Manager (Staff Contact: Cherie Rosenquist, 586-3090)**

**Background:** Amendments to the Classification Plan are periodically required to account for organizational changes, increased job responsibilities, and equity adjustments to salary ranges.

The staff is proposing to abolish two classifications of Executive Secretary 1) to the City Manager and 2) to the Assistant City Manager; and combine them into a single classification. There is no change in the salary range. This action has met all meet and confer obligations with the appropriate bargaining unit.

**Recommendation:** Adopt a resolution amending the Classification Plan to abolish two classifications—Executive Secretary to the City Manager and Executive Secretary to the Assistant City Manager—and combine them into a revised classification of a confidential, non-exempt, Executive Secretary classification as shown in the two Exhibits included in the Council’s agenda packets.

- \* 15. **Adopt Resolution to Amend the Memorandum of Understanding with Milpitas Employees Association (Staff Contact: Cherie Rosenquist, 586-3082)**

**Background:** The City has met with the Milpitas Employees Association to implement new State of California Water regulations. The regulations require a higher level training and certification for employees assigned to work on the City’s water system as required for Water Distribution Operators (D3 & D5). The City has met its meet and confer obligations with the appropriate bargaining unit and the parties have reached a tentative agreement. A copy of the agreement is included in the Council’s agenda packets.

**Recommendation:** Adopt a resolution to amend the current Memorandum of Understanding for the period January 1, 2003, through December 31, 2005, between the City of Milpitas and the Milpitas Employees Association pertaining to meeting State requirements for water distribution operations.

## **XXI. BIDS AND CONTRACTS**

- \* 16. **Review and Approve Amendment No. 3 to Consulting Services Agreement Between City of Milpitas and Dr. Thomas Shanks Consulting to Extend the Contract Expiration Date and Postpone the Due Date of the Final Report (Staff Contact: Tambri Heyden, 586-3280)**

**Background:** At the December 21, 2004, Council meeting, the Council postponed consideration and approval of the draft final ethics awareness survey to the January 18, 2005, Council meeting. The final deliverable under the ethics project contract with Dr. Shanks is a final report, which among others, compiles the results of the final survey. Given the delay in the release of the survey until Council approval, Dr. Shanks cannot meet his contract obligation to submit his final report by January 31, 2005 – the expiration date of the contract. Therefore, included in the Council’s packet is a proposed amendment (No. 3) to the contract to postpone the due date of the final report to February 24, 2005, and extend the expiration of the contract to March 31, 2005.

The 30 days beyond the final report deadline allows time for Steering Committee and March 2, 2005, CAC review and recommendation of the report and any requested modifications to be made by Dr. Shanks. The new expiration date changes Section 1.1 of the contract and the new final report date changes the Project Schedule in Exhibit B.

**Recommendation:** Review and approve Amendment No. 3 to the Consulting Services Agreement Between City of Milpitas and Dr. Thomas Shanks Consulting to extend the contract expiration date to March 31, 2005, and postpone the due date of the final report to February 24, 2005.

- \* 17. **Authorize the Purchase of Mobile Computer Upgrades (Staff Contact: Bill Marion, 586-2701)**

**Background:** In early 2002 the City began installing in-vehicle mobile computers for the Police Department. These specialized computers are approaching three years of use and are nearing the end of their service life. In researching replacement options, staff has received a proposal from the equipment manufacturer to upgrade the existing computers rather than purchase complete replacements. Per unit replacement cost would be in excess of \$6,000 while upgrade cost are \$2548 plus tax. The upgraded units would have the same capabilities and warranty as a new replacement unit. This upgrade option is only available from the original equipment

manufacturer and would result in a significant cost savings. The upgrade would be accomplished for all 30 Police patrol vehicles and would provide a reliable mobile computing environment for the future. Funding for this upgrade is available in the Enhanced Public Safety Project, CIP #3389.

**Recommendation:** Authorize the City Manager to execute a purchase order in an amount not to exceed \$82,746.30 for Mobile Computer upgrades from Data911 Systems.

- \* 18. **Authorize City Manager to Execute Agreement Amendment: Damon S. Williams Associates (Project No. 7100) (Staff Contact: Doug De Vries, 586-3313)**

**Background:** On August 3rd, 2004, the City Council awarded a consultant contract to Damon S. Williams Associates to develop a strategic plan for water system seismic improvements. This contract evaluates the need for improvements that would increase the reliability the water system and the preparedness of the City's emergency response capability after a seismic event. This work assists the City in implementing cost-effective mitigation activities as part of a pre-disaster hazard mitigation program.

Staff recommends that Damon S. Williams Associates perform additional services to include the development of technical supporting information necessary for city staff to submit a Pre-Disaster Mitigation grant application for the South Milpitas Water Line Replacement, City Project 7098 for which the preliminary cost is about \$1.4 million. The Pre-Disaster Mitigation program was authorized by §203 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (Stafford Act), 42 USC. Funding for the program is provided through the National Pre-Disaster Mitigation Fund at a local cost share of 25%, to assist States and local governments in implementing cost-effective hazard mitigation activities that complement a comprehensive mitigation program. Additionally staff recommends that Damon S. Williams Associates be retained to perform related services involving on-call project support.

The grant submittal is to be completed electronically by February 25, 2005, to the state, who then will submit the application to FEMA by March 14. An agreement amendment is proposed for these additional services. Staff has negotiated a scope and fee for these services not to exceed \$14,075, which is considered reasonable for the work. There are sufficient funds in the project budget to cover this additional expense.

**Recommendation:** Authorize the City Manager to execute the agreement amendment with Damon S. Williams Associates, in the amount of \$14,075, subject to approval as to form by the City Attorney.

- \* 19. **Approve Contract Extension for Asphalt Pavement Patching and Repair: Wattis Construction Co., Inc. (Project No. 4182) (Staff Contact: Chris Schroeder, 586-3161)**

**Background:** Wattis Construction Co., Inc. was awarded a contract on December 18, 2000 for asphalt pavement patching and repair of City streets when City crews are over extended on other jobs and unable to respond in a timely manner. The contract was for two (2) years with an option for renewal for three (3) more, provided the services rendered met the City's requirements. When called upon, Wattis Construction has done an acceptable job of repairing the City streets and is willing to provide service for the fifth and final year of the contract. Staff proposes a one-year extension of the agreement to December 19, 2005 at the same rates per square foot as indicated in Amendment No. 1.

**Recommendation:** Authorize the City Manager to execute an amendment to extend the contract one additional year with the Wattis Construction Co., Inc. to December 19, 2005, subject to approval as to form by the City Attorney.

## **XXII. CLAIMS AND DEMANDS**

**XXIV. ADJOURNMENT**

**NEXT REGULARLY SCHEDULED COUNCIL MEETING  
TUESDAY, FEBRUARY 1, 2005, AT 7:00 P.M.**